sions is excluded. Biglow, Estoppel, lix. It is therefore a branch of the law of evidence, and there would appear to be no inherent difficulty in its application to the criminal law. Estoppel in pais is to be distinguished at the outset from that estoppel most familiar to the criminal law, and which arises from the nature of an act committed: as where the act is of such a nature that the defendant is estopped to deny the intent to commit it. In such cases the presumption of an intent is so strong as to become in law conclusive. Such estoppel is therefore only that which denies the right to rebut a conclusive presumption. In some jurisdictions, however, an estoppel is allowed to be found in two classes of cases where no conclusive presumptions arise from the acts themselves. One is where, on an indictment for embezzlement of the property of his principal, the agent is estopped to deny the agency he assumed and under color of which he received the property, Ex parte *Hedley* (1866) 31 Cal. 109; the second, where one is estopped to deny the validity of a signature which he did not at once repudiate, when the signer of his name is on trial for the forgery. *Reg.* v. *Smith* (1862) 3 Fost & F. 504. The admissions, however, forming the ground for estoppel in pais are only available to the party to whom they were made and who must be a party to the action. It is the fact of an otherwise possible prejudice to the other party which makes the admissions conclusive as to their truth. In both the classes of cases above the State was a party to the action, but in neither had the representations been made to it. An attempt has been made to justify the first class on the broad ground that one should not be allowed to take advantage of his own wrong, 2 Bishop Crim. Law § 364, but the difficulty seems to be insuperable that, save for this technicality, the crime charged had not been committed; and the justification attempted is contrary to the principle, that, in criminal actions the right of the State is to be strictly confined; and, to the tendency of the law to enlarge, in criminal actions, the rights of the defendant.

In the principal case, however, there would seem to have existed no objection to an application of the doctrine. The representations of the defendant had been made directly to the State and the State had acted on them to its disadvantage, to allow the defendant to deny the truth of his representations would have prejudiced the interest of a party to the action, and as against him therefore their truth should have been conclusive.

LIABILITY OF AN AGENT TO ACCOUNT FOR SECRET PROFITS.—From a fundamental principle of the law of agency, that the relation of principal and agent calls for an exercise of wholly disinterested zeal by the latter in discharging the duties of his employment, has grown the rule that all profits made by the agent in the course of his employment, beyond an agreed compensation, enure to the benefit of his principal. Story, Agency § 211. *Massey* v. *Davies* (1794) 2 Ves. Jr. 317. Where the profits are made in the course of the agency it may be presumed that they were intended for the principal's benefit; but the right of the principal is placed on broader grounds, and, though the profits are made in

direct violation of duty, they may be recovered by the principal, on the theory that the agent should not benefit by his own wrong. Meechem, Agency § 469; Story, supra, § 207; *Dutton* v. *Willner* (1873) 52 N. Y. 312. It is of no consequence that the principal actually profited by the transaction beyond expectations and a strict execution by the agent of his instructions. The rule is applied without exception as the most effective way to close the door to fraud. The underlying rule of public policy is that which forbids the trustee to profit by a use of the property of his cestui. Story, supra, § 211, note. Meecham, supra, § 469.

In a recent case in England the Court of King's Bench has distinguished between a right to recover profits already come into the hands of the agent in the form of money, and a right to recover such profits when existing in the form of a contract between the agent and the third party for the payment of money; saying that until the right of the agent to collect the profits had been exercised by him, and the profits actually realized, the principal had no right to them which he might enforce against the agent. *Powell & Thomas* v. *Evan Jones & Co.* [1905] 1 K. B. 11.

Where the title to property or funds in the hands of an agent has been made over to him by the principal, such property or funds are impressed with a trust which will follow them into the hands of any but an innocent purchaser for value. *Roca* v. *Byrne* (1895) 145 N. Y. 182. If they become commingled with the funds of the agent the entire fund is impressed with a charge in favor of the principal to the amount of the trust fund; *Broadbent* v. *Barlow* (1861) 3 De G. F. & J. 570; if the agent speculates with the trust res the right to the profits of the speculation is in the principal. Meechem, supra, § 469. In the principal case there was no trust res, nor was the title to the profits ever in the principal. In such cases the relationship is held to be one of debtor and creditor, and the action one for money had and received to the principal's use. *Lister* v. *Stubbs* (1890) 45 Ch. Div. 1. While the reason for allowing the action is one of public policy, the action is in the nature of quasi contract. It is perfectly reasonable to consider the value of the particular transaction to the principal diminished by the amount of the agent's profits. It would seem therefore that no valid distinction could be drawn between profits in the agent's hands in the form of money and valuable contract rights. The contract has a present value, and it is possible to regard the agent as unjustly enriched at the expense of the principal to the extent of that value. It is true that the contract cannot be considered as that of the principal, for it was not made by the agent within the scope of his authority, nor ostensibly for the principal so as to admit of ratification; nor, under the authority of *Lister* v. *Stubbs*, supra, can the agent be considered a trustee of the contract for the principal. There would seem, however, to be no valid ground for postponing the rights of the principal until the agent had collected the sums as they fell due under the contract, and refusing a decree for an accounting for the value of the contract, when a decree for money already received is allowed.